

13-35-305 Evidence to be considered in determining cause to terminate or discontinue.

- (1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:
 - (a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
 - (b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
 - (c) the permanency of the investment;
 - (d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;
 - (e) whether the franchisee has adequate powersport vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new powersport vehicles handled by the franchisee and has been and is rendering adequate services to the public;
 - (f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
 - (g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
 - (i) reasonable;
 - (ii) material; and
 - (iii) not in violation of this chapter;
 - (h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:
 - (i) reasonable;
 - (ii) material; and
 - (iii) not in violation of this chapter;
 - (i) prior misrepresentation by the franchisee in applying for the franchise;
 - (j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and
 - (k) any other factor the advisory board or the executive director consider relevant.
- (2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:
 - (a) the sole fact that the franchisor desires:
 - (i) greater market penetration; or
 - (ii) more sales or leases of new powersport vehicles;
 - (b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's powersport vehicles; or
 - (c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-35-201.
- (3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

Amended by Chapter 268, 2005 General Session